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Twelve Things Everyone Should Know About the “Contraceptive Mandate”

On February 15, 2012 the Obama Administration published a final rule mandating contraception and sterilization coverage in almost all private health plans nationwide, with an extremely narrow “exemption” for some religious employers. In a March 21 “Advance Notice of Proposed Rulemaking,” the Administration leaves this mandate unchanged, while proposing an “accommodation” under which the mandate might be applied in various ways to the employees of religious organizations that do not receive the exemption.

Important points to understand:

- 1. The mandate forces coverage of sterilization and abortion-inducing drugs and devices as well as contraception.** Though commonly called the “contraceptive mandate,” the federal mandate also forces employers to sponsor and subsidize coverage of sterilization. And by including all drugs approved by the FDA for use as contraceptives, the mandate includes drugs that can induce abortion such as “Ella” (Ulipristal), a close cousin of the abortion pill RU-486.
- 2. The mandate does not exempt Catholic charities, schools, universities, or hospitals.** These institutions are vital to the mission of the Church, but the Administration does not deem them “religious employers” deserving conscience protection because they do not “serve primarily persons who share the[ir] religious tenets.” The Administration denies these organizations religious freedom precisely because their religiously motivated purpose is to serve the common good of society—a purpose that government should encourage, not punish.
- 3. The mandate forces these institutions and others, against their conscience, to pay for and facilitate things they consider immoral.** Under the mandate, the government forces religious insurers to write policies that violate their beliefs; forces religious employers and schools to subsidize and facilitate coverage that violates their beliefs; and forces conscientiously objecting employees and students to purchase coverage that violates their beliefs.
- 4. The federal mandate is much more sweeping than existing state mandates.** Employers can generally avoid the contraceptive mandates in 28 states by self-insuring their prescription drug coverage, dropping that part of their coverage altogether, or opting for regulation under a federal law (ERISA) that pre-empts state law. The HHS mandate closes off all these avenues of relief. HHS’ policy of mandating surgical sterilization coverage is reflected in only one state law, Vermont. HHS also chose as its model the narrowest state-level religious exemption, drafted by the ACLU and existing in only 3 states (New York, California, Oregon).
- 5. Many others have joined the Catholic bishops in speaking out against the mandate.** Many recognize this as an assault on the broader principle of religious liberty, whether or not they agree with the Church on the underlying moral question. For example, at a February 2012 congressional hearing on this issue, testimony supporting the USCCB’s position was heard from the President of the Lutheran Church-Missouri Synod, a distinguished Orthodox rabbi, and officials and professors from several Protestant institutions of higher learning. The nation’s largest non-Catholic denomination, the Southern Baptist Convention, has strongly criticized the contraceptive mandate, as have leaders of the National Association of Evangelicals, Institutional Religious Freedom Alliance, Union of Orthodox Jewish Congregations of America, Evangelicals for Social Action, and the Council for Christian Colleges and Universities. An online declaration supporting the Church’s position has been signed by about 28,000 Catholic and non-Catholic women, including many health professionals, academics and businesswomen.

6. The rule that created the uproar has not changed at all, but was finalized as is. After its initial proposal of August 2011 was widely criticized across the political spectrum as an attack on religious freedom, the Administration announced its final rule of February 15, 2012 as a compromise. But in fact that rule finalizes the original proposal “without change.” So religious organizations dedicated to serving people of other faiths are still not exempt as “religious employers.”

7. The proposed “accommodation” is not a current rule, but a promise that comes due beyond the point of public accountability. On February 15, besides finalizing its mandate without change, HHS also announced it will develop more regulations to apply that mandate differently to “non-exempt, non-profit religious organizations”—the charities, schools, and hospitals that were left out of the “religious employer” exemption. The regulations for this “accommodation” will be developed during a one-year delay in enforcement, their impact not felt until after the November election.

8. In its March 21 Advance Notice, HHS makes it clear that even the “accommodation” will do nothing to help objecting insurers, objecting employers that are not “religious” as defined by HHS, or individuals. In its August 2011 comments, and many times since, the Catholic bishops’ conference identified all the stakeholders in the process whose religious freedom is threatened—all employers, insurers, and individuals, not only those who meet the government’s definition of religious employers. It is now clear that all insurers, including self-insurers, must provide the coverage; and almost all individuals who pay premiums (whether enrolled in an individual plan or an employer plan) have no escape from subsidizing that coverage. Only organizations identified as “religious” (to be defined by later regulation) may qualify for the “accommodation.”

9. Even religious charities, schools, and hospitals that do qualify for the “accommodation” will still be forced to violate their beliefs. The mandate will still be applied with full force to all employees of these “second-class-citizen” religious institutions, and to the employees’ dependents such as teenage children. While the Administration says employees will not pay an additional charge for this coverage, ultimately the funds to pay for it must come from the premium dollars of the employer and employees. And when these organizations provide any health coverage to their employees, that will be the trigger for having the objectionable coverage provided “automatically” to all these employees and their dependents -- even if both employer and employee object to it.

10. The “women’s health” claims behind the mandate are doubtful at best. Pregnancy itself is not a disease, but the normal way that each of us came into the world - and there are other ways to avoid an untimely pregnancy than the surgical procedures and prescription drugs mandated for women’s coverage here. (Neither natural family planning, nor male methods such as condoms or vasectomies, are included in the mandate.) Many studies have found contraceptive programs failing to reduce unintended pregnancies or abortions. Hormonal contraceptives have been associated with an increased risk for stroke, heart attacks, vascular disease and breast cancer, some of the greatest killers of women today. Injectable contraceptive drugs are associated with an increased risk for contracting and transmitting AIDS, a deadly disease the “preventive services” mandate is supposed to help prevent. Medical experts raising such concerns cannot be accused of waging a “war on women.”

11. This is not about any legitimate medical use for hormonal or other drugs. Contrary to some media claims, Catholic ethical directives on health care (and the health plans based on them) allow use of medications for serious non-contraceptive purposes, even if the same drugs could also be prescribed for contraception. The idea that respect for Catholic moral objections to contraception could endanger access to such drugs for use in healing disease is a red herring.

12. Beware of claims, especially by partisans, that the Catholic bishops are partisan. The bishops warned Congress about the need for clear conscience protection in the face of new health coverage mandates throughout the debate on health care reform; they were arguing against the proposed contraceptive mandate and other new threats to religious freedom in 2010. Since then they have simply continued advocating the same moral principles. The bishops did not pick this fight, or decide that it would continue into an election year—others did. The Church forms its positions based on principles—here, religious liberty for all, and the life and dignity of every human person—not polls, personalities, or political parties.